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No. ____

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

BEN CARTER,

Petitioner

v.

STEEL WORKERS INTERNATIONAL ASSOCIATION, AFL-CIO,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether or not a state cause of action based upon outrageous conduct and violation of State Right to Work Laws by a non-union employee against his former union is preempted by the National Labor Relations Act.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Ben Carter, the Petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit entered in the above entitled case on February 13, 1984.

OPINIONS BELOW

The February 13, 1984, opinion of the Court of Appeals, whose judgment is herein sought to be reviewed, is reported at 724 F.2d 1472 and is reprinted in Appendix A to this petition, at pages 1a-13a. A prior opinion of the Court of Appeals for the State of Georgia reported at 133 Ga. App. 872, cert. denied, 423 U.S. 1078, appears in Appendix B to this petition, at pages 14a-19a.

JURISDICTION

The judgment of the Court of Appeals (Appendix A, pages 1a-13a) was entered on February 13, 1984. A timely petition for rehearing and suggestion for rehearing en banc was denied on March 16, 1984. (Appendix C, pages 20a-21a). The jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS

This case involves the Supremacy Clause set out in Article VI, paragraph (2), of the Constitution of the United States, which provides as follows:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary nonwithstanding.

STATUTORY PROVISIONS

This case involves the application of Georgia's right to work laws as part of an intentional tort of outrage allowable under Georgia law. The Georgia right to work sections of the Official Code of Georgia read as follows:

> O.C.G.A. 34-6-2 *Use of force or threats to prevent another from quitting or continuing employment.* It shall be unlawful for any person, acting alone or in concert with one or more other persons, by the use of force, intimidation, violence, or threats thereof, to prevent or attempt to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment by, any employer, or from entering or leaving any place of employment of such employer.

O.C.G.A. 34-6-23 *Contracts requiring membership in, or payments to, labor organizations as contrary to public policy.* Any provision in a contract between an employer and a labor organization which requires as a condition of employment, or of continuance of employment, that any individual be or remain a member or an affiliate of a labor organization, or that any individual pay any fee, assessment, or other sum of money whatsoever, to a labor organization, is hereby declared to be contrary to the public policy of this State, and any such provision in any such contract heretofore or hereafter made shall be absolutely void.

O.C.G.A. 34-6-24 *Unlawfulness of contracts requiring membership in, or payments to, labor organizations as condition of employment.* It shall be unlawful for any employer to contract with any labor organization, and for any labor organization to contract with any employer, so as to make it a condition of employment of any individual, or of continuance of such employment, that such individual be or remain a member of a labor organization, or that such individual pay any fee, assessment, or other sum of money whatsoever, to a labor organization.

STATEMENT OF THE CASE

This is an action filed by Petitioner, Ben Carter, against the Respondent, International Sheet Metal Workers Association, wherein Petitioner sought and recovered damages as the result of an outrageous pattern of conduct that had been perpetrated against him over a series of years by the Respondent International.

At the time the action was initiated in December of 1972, the Plaintiff was a former member of the Respondent Union and had been denied his right to a reinstatement card he had sought from the New Jersey Local of which he had formerly been a member. Petitioner had moved to Georgia and desired to work on union jobs in

Georgia. He had surrendered his union card in New Jersey in order to work in a management position. When Carter attempted to apply for work in Georgia, the employers either did not hire him or let him go once hired because the employers had exclusive hiring agreements with locals of the Respondent International Union.[1]

Previous to moving to Georgia, Petitioner Carter had at least two lengthy appeals with the Respondent International before applying for his reinstatement card. On both appeals, through the Union administrative procedure, Petitioner had prevailed only after invoking the reluctant assistance of the Respondent International. In the first controversy, Local No. 13 of Respondent International in New Jersey had maintained that Carter owed them strike funds which Carter had refused to pay. Carter was successful on that appeal in maintaining that he was employed in a non-union position and was not responsible for contribution. He was nonetheless tried before the Local and found guilty. In this first skirmish, the International ultimately ruled that the contributions were voluntary and not mandatory. Petitioner was nonetheless admonished by the International Union President, Carlough, for refusing to pay and the President stated to Carter in writing that every member had a moral obligation to support the strike which Carter had refused to support.

Petitioner's next major appeal or conflict with the Respondent Union arose when he had gone into a management position and requested a withdrawal card from Local 13 in New Jersey on or about November 23, 1970. This time the withdrawal card request was delayed because

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[1] Such contracts under O.C.G.A. 34-6-24 are void as against public policy. See Statutory Provisions, *supra*, pages 2-3.

the Union was concerned with unpaid obligations it alleged Carter owed Local 13 which had accrued while Carter was operating a company of his own known as C & M. This claim was contested by Carter and he wrote a series of letters to this Local dated January 23, 1971; February 6, 1971; February 22, 1971; and March 15, 1971, all of which letters requested expedition of his withdrawal card. The Local then turned this matter over to the Respondent International whose Secretary-Treasurer wrote Carter asking for him to explain the indebtedness. Carter was never sued for the indebtedness and ultimately, the Secretary-Treasurer notified the Local to issue the withdrawal card. In a letter to Carter the Secretary-Treasurer expressed concern over Carter's failure to pay the claimed indebtedness, despite Petitioner's consistent and constant denials. The reocrd is well documented with a series of voluminous correspondence between Carter and the Respondent International which indicates a dislike of Carter by the officers of this International. This hostility was to become even more apparent when Carter moved to Georgia, as evidenced by the additional correspondence presented at trial.

The final and third episode, which led to the filing of this action, occurred when Carter moved back to Geogia and again attempted to obtain his reinstatement card. In refusing this request, the assistant to the general President of Respondent International notified Carter by mail that the Union investigation revealed Carter owed Local 13 a sum of money and indicated to Carter by leter that if he was serious about resolving this dispute, he should meet with Local 13 in an effort to work out some agreement. This is the same debt that was questioned when he attempted to obtain his withdrawal card and which Carter had denied all along. It was after this occurrence that Carter was denied employment and terminated from jobs

in Georgia because of Union pressures exerted on his employer and a prospective employer.

At the time this action was initiated, Carter was not a member of the Respondent International or any of its locals. He was merely attempting to obtain employment. Once each employer learned Carter was not cleared with the International Union, he was either fired or not hired.[2]

At trial Carter had recovered a verdict against Respondent International for $35,000.00 general damages, $110,000.00 exemplary damages, and $5,280.00 as attorney's fees.

Jurisdiction in Federal Court is controlled by *In Re: Carter*, 618 F.2d 1073 (5th Cir. 1980).

REASONS FOR GRANTING THE WRIT

The Court Of Appeals Has Decided A Federal Question In A Way In Conflict With Applicable Decisions Of This Court.

Petitioner Carter's cause of action was based upon an intentional tort under Georgia law permitting the recovery of damages for outrageous conduct. The cause of action also embodies the right of Petitioner Carter to work under the State of Georgia's right to work laws.[3] The issue presented before this Court is whether or not the State cause of action as alleged by Carter is preempted by the National Labor Relations Act. The lower Circuit Court had held that the conduct complained of by Petitioner Carter is preempted pursuant to *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 79

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[2] Petitioner's complaint appears in Appendix D to this petition at pages 22a-24a. Local 85 was subsequently dismissed as a party defendant and the claim for damages was increased.

[3] Statutory Provisions, *supra*, pages 2-3.

S.Ct. 773.[4] The *Garmon* doctrine, as it is called, is best defined at 359 U.S. 244 as follows:

> "When it is clear or may be fairly assumed that the activities which a state proports to regulate are protected by Section 7 of the National Labor Relations Act, or constitute an unfair labor practice under Section 8, due regard for the federal enactment requires that the state jurisdiction must yield. To leave the states free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. Nor has it mattered whether the states have acted through laws of broad general application rather than laws specifically directed toward the governance of industrial relation. Regardless, of the mode adopted, to allow the state to control conduct, which is the subject of national regulation, would create potential frustrations of national purposes."

Although the *Garmon* doctrine continues as precedent, there are, nonetheless, various exceptions to this doctrine. *Vaca* v. *Sipes*, 386 U.S. 180; *Linn* v. *United Plant Guard Workers*, 383 U.S. 53; *Farmer* v. *Carpenters*, 430 U.S. 293; *Belknap, Inc.* v. *Hale*, 103 S.Ct. 3172.

The decision of the Eleventh Circuit holding that Petitioner Carter's cause of action was preempted by the National Labor Relations Act is directly in conflict with the holding in *Farmer* v. *Carpenters*, *supra*. The plaintiff in *Farmer* had recovered a verdict on the basis of a California tort for "outrageous conduct" similar to the

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[4] The *Garmon* decision is merely a judicial application of the Supremacy Clause. See page 2, *supra*.

cause of action of Petitioner Carter. This Court in the *Farmer* case, at page 302, stated:

> "No provision of the National Labor Relations Act protects the 'outrageous conduct' complained of by petitioner Hill in the second count of the complaint. Regardless of whether the operation of the hiring hall was lawful or unlawful under federal statutes, there is no federal protection for conduct on the part of union officers which is so outrageous that 'no reasonable man in a civilized society should be expected to endure it.' See *supra*, at 1060. Thus, as in *Linn* v. *Plant Guard Workers*, 383 U.S. 53, 86 S.Ct. 657, 15 L.Ed.2d 582 (1966), and *Automobile Workers* v. *Russell*, *supra*, permitting the exercise of state jurisdiction over such complaints does not result in state regulation of federally protected conduct.
>
> The State, on the other hand, has a substantial interest in protecting its citizens from the kind of abuse of which Hill complained. That interest is no less worthy of recognition because it concerns protection from emotional distress caused by outrageous conduct, rather than protection from physical injury, as in *Russell*, or damage to reputation, as in *Linn*. Although recognition of the tort of intentional infliction of emotional distress is a comparatively recent development in state law, see W. Prosser, Law of Torts, Section 12, pp. 49-50, 56 (4th ed. 1971), our decisions permitting the exercise of state jurisdiction in tort actions based on violence or defamation have not rested on the history of the tort at issue, but rather on the nature of the State's interest in protecting the health and well-being of its citizens."

Of even more significance, this Court in the *Farmer* case, at page 300, commented upon the standards to be used in applying the *Garmon* doctrine.

> . . . On this basis a rigid application of the *Garmon* doctrine might support the conclusion of the California courts that Hill's entire action was preempted by

> federal law. Our cases indicate, however, that inflexible application of the doctrine is to be avoided, expecially where the State has a substantial interest in regulation of the conduct at issue and the State's interest is one that does not threaten undue interference with the federal regulatory scheme. With respect to Hill's claims of intentional infliction of emotional distress, we cannot conclude that Congress intended exclusive jurisdiction to lie in the Board.

The decision of the lower circuit court simply failed to honor and follow the *Farmer* doctrine. The essence of the court's decision was a misapplication as to the substantive basis of Petitioner's cause of action. At page 305 of *Farmer*, the court stated:

> . . . Simply stated, it is essential that the state tort be either unrelated to employment discrimination or a function of the particularly abusive manner in which the discrimination is accomplished or threatened, rather than a function of the actual or threatened discrimination itself.

The conduct perpetrated against Carter was outrageous in the sense he had had three previous appeals go to the International which were reluctantly dropped. In each event, Carter was admonished by the International that there were certain moral and other obligations of which he should be mindful. From the evidence, it is obvious the state tort was a "function of the particularly abusive manner in which the discrimination was accomplished or threatened." The damages Carter sustained were not based on the actual discrimination itself, but flowed from the intentional conduct of the International in denying him the right to work. The issue of lost wages was not submitted to the jury since this was not an element of Carter's claim. The lower circuit court has confused the nature and type of Carter's action. There

appears to be some uncertainty as to what the tort of outrage is, although it was well defined in the *Farmer* case.[5]

When Congress enacted Section 14b of the Taft-Hartley Act, it granted unto the states the right to enact right to work laws. At the time of Carter's cause of action, such laws existed in Georgia.[6] Under right to work laws, an individual does not have to be a member of a union to obtain work, not does he have to join a union after obtaining work. Embodied in these laws are state feelings, policies, and beliefs which are mere "peripheral concerns"

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[5] Interestingly, the tort of outrage probably is based, in part, on the Restatement Law of the Torts, Second at paragraph j, page 77, on emotional distress which reads as follows:

> j. *Severe emotional distress.* The rule stated in this section applies only where the emotional distress has in fact resulted, and where it is severe. Emotional distress passes under various names, such as mental suffering, mental anguish, mental or nervous shock, or the like. It includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, worry, and nausea. It is only where it is extreme that liability arises. Complete emotional tranquility is seldom attainable in this world, and some degree of transient and trivial emotional distress is part of the price of living among people. The law intervenes only where the distress is so severe that no reasonable man could be expected to endure it. The intensity and the duration of the distrass are factors to be considered in determining its severity. *Severe distress must be proved; but in many cases the extreme and outrageous character of the defendant's conduct is in itself important evidence that the distress has existed. . .*

[6] See Statutory Provisions, page 2-3.

of the National Labor Relations Act. Petitoner's cause of action is based on the tort of outrage as well as the indiscriminate violation of his rights under Georgia's right to work laws. This latter circumstance is merely an aggravating circumstance in making out the tort of outrage as contemplated in Carter's cause of action.

At the time the cause of action arose, Carter was not a member of a union. He was attempting to obtain employment as any individual might do so in the State of Georgia. The Respondent Union at this time was getting even with Carter by simply refusing to render any assistance. The Union sat silent for six years, during which period of time Carter was denied the right to work on the higher paying union jobs that existed in the State of Georgia and area where Carter lived. Petitioner faced the dilemma of being refused work because he was not a member of the union and being denied reinstatement until he paid an invalid indebtedness. Carter refused to succumb to the Union's demand and filed this action on December 15, 1972. His card as later given him in 1978. Carter had been effectively denied the right to work for this entire period of time and sought recovery for the grief that he had been forced to undergo as a result of the Union's misconduct.

This Court has previously denied certiorari in this same case on this same issue. *Sheet Metal Workers* v. *Carter*, 133 Ga. App. 872, U.S. cert. denied, 423 U.S. 1078. (Appendix B, pages 14a-19a). Petitioner now suggests that this Court intended to hold that his cause of action was not preempted. Notwithstanding the previous denial of certiorari, Petitioner further suggests that this Court's decision in *Belknap, Inc.* v. *Hale, supra*, requires reversal of the lower circuit court's decision. In short, *Belknap* dealt with a classical state cause of action under Kentucky law that resulted when an employer, not a union, in a

strike situation made false and misleading promises and representations to newly hired workers regarding their job permanency. When this agreement was breached at the conclusion of the strike, these workers were fired. The issue in *Belknap* was whether or not a state cause of action was preempted under the *Garmon* doctrine. This Court, in a six-three decision, held that the state cause of action was not preempted and relied upon the precedents of *Linn* and *Farmer, supra*. The plight of the discharged employees in *Belknap* was not unlike or dissimilar from the plight of Petitioner Carter in this case. The *Garmon* doctrine did not apply in *Belknap* and Petitioner would argue that the *Garmon* doctrine does not apply in this case.

CONCLUSION

WHEREFORE, Petitioner respectfully prays that a Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

Ben CARTER, Plaintiff-Appellee,

v.

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION and Local 85 Sheet Metal Workers' International Association, Defendant-Appellants.

No. 82-8198.

United States Court of Appeals,
Eleventh Circuit.

Feb. 13, 1984.

Sheet metalist brought action against international union asserting intentional infliction of emotional distress based upon union's failure to intercede in sheet metalist's behalf when local union refused to reinstate his union card. The United States District Court for the Southern District of Georgia, Anthony A. Alaimo, Chief Judge, entered judgment on jury verdict awarding sheet metalist $35,000 compensatory damages, $110,000 punitive damages, $5,280 attorney fees, and union appealed. The court of Appeals, Clark, Circuit Judge, held that sheet metalist's claim for intentional infliction of emotional distress was preempted by provisions of National Labor Relations Act.

Reversed and remanded.

James & Langford, James T. Langford, Atlanta, Ga., Donald W. Fisher, Toledo, Ohio, for defendants-appellants.

William R. McCracken, Augusta, Ga., for plaintiff-appellee.

Appeal from the United States District Court for the Southern District of Georgia.

Before HATCHETT and CLARK, Circuit Judges, and SCOTT*, District Judge.

CLARK, Circuit Judge:

Defendant-appellant, International Union (International), appeals from a judgment awarding Plaintiff-appellee, Carter, $35,000 compensatory damages, and $5,280 attorneys fees.[1] The sole issue we need address in this appeal is whether the basis of that award, a state tort claim for intentional infliction of emotional distress, is preempted by the provisons of the National Labor Relations Act under *San Diego Bldg. Trades Council* v. *Gar-*

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*Honorable Charles R. Scott, U.S. District Judge for the Middle District of Florida, was a member of the panel that heard oral arguments but due to his death on May 12, 1983, did not participate in this decision. The case is being decided by a quorum. 28 U.S.C. § 46(d).

[1] Carter sought damages against the defendant alleging that beginning in 1972 it conspired with Local Union 13, "to deprive the plaintiff of his employment in the Sheet Metal Industry, . . . to deny the plaintiff his right and privilege to be a member of defendants' union. . . and to subject the plaintiff to embarrassment, scorn and derision among his friends, associates, relatives and fellow employees." Plaintiff alleged: "As a result of the aforesaid acts, the plaintiff has been unable to find employment in his industry, and he is entitled to recover, among other things, the wages he has lost for these aforesaid acts of the defendant." Plaintiff alleged that the defendants acted maliciously and sought compensatory and punitive damages. The plaintiff dropped Local 85 as a defendant and proceeded against the defendant International Union after removal of the case to federal court.

mon, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959). We hold that the state court action is preempted by § *(b)(1) and (2)(29 U.S.C. § 158(b)(1) and (2)).

LEGAL BACKGROUND

[1-3] The preemption issue has been litigated frequently since *Garmon, supra*, was decided. *See Linn* v. *United Plant Guard Workers*, 383 U.S. 53, 86 S.Ct. 657, 15 L.Ed.2d 582 (1966), (No preemption. Plaintiff had a separate state tort action for defamation arising from activity different from that which could be remedied by the N.L.R.B.): *Farmer* v. *United Brotherhood of Carpenters*, 430 U.S. 290, 97 S.Ct. 1056, 51 L.Ed.2d 338 (1977), (Same as *Linn* except Linnm had no remedy before the Board while Farmers' intestate Hill had a hiring Hall discrimination action pursuant to the N.L.R.A. and a separate state action for defamation); *Sears, Roebuck & Co.* v. *San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 98 S.Ct. 1745, 56 L.Ed.2d 209 (1978), (Sears sued the union for trespass on its private property while picketing, the trespass action being held a separate state action); *International Union of Operating Engineers* v. *Jones*, ___ U.S. ___, 103 S.Ct. 1453, 75 L.Ed.2d 368 (1983), (Action in Georgia state court against union for wrongful interference with plaintiff's contractual right to work held preempted by N.L.R.A.). The first teaching of these cases is that state jurisdiction must yield where the activities giving rise to the lawsuit are protected by § 7 of the National Labor Relations Act or constitute an unfair labor practice under § 8. Collaterally these cases teach that the preemptive doctrine will not apply if the activitiy sued upon is of peripheral concern of the Labor Act or touches "interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress had

deprived the States of the power to act." *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. at 244, 79 S.Ct. at 779.[2]

[4] In *Linn, supra*, plaintiff's cause of action sounded in defamation. During a union organizing campaign a member of the union circulated a leaflet which Linn alleged was "wholly false, defamatory and untrue." The Supreme Court considered the fact that the National Labor Relations Board has no jurisdiction to award damages in an action based on defamation[3] and that a person issuing defamatory material is not protected by the Act from such a lawsuit.[4] Noting that an earlier Supreme Court case had held that state jurisdiction was appropriate where the basis of the action was of "merely peripheral concern of the Labor Management Relations Act,"[5] the Court concluded that a state had an overriding interest in protecting its residents from malicious libel.[6] Thus we learn from *Linn* that where an injured party has no claim for redress under the N.L.R.A. and state law authorizes a cause of action for such a wrong, the preemption doctrine does not apply.

The next instructive case, *Farmer* v. *United Brotherhood of Carpenters*, 430 U.S. 290, 97 S.Ct. 1056, 51

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[2] Put another way, the *Garmon* preemption doctrine does not apply if the state has a substantial interest in regulating the challenged conduct and its regulation would not threaten undue interference with the federal regulatory scheme. *Farmer, supra*, 430 U.S. at 302, 97 S.Ct. at 1064.

[3] 383 U.S. at 63, 86 S.Ct. at 663.

[4] *Id.* at 61, 86 S.Ct. at 662.

[5] *Id.* at 59, 86 S.Ct. at 661.

[6] *Id.* at 61, 86 S.Ct. at 663.

L.Ed.2d 338 (1977), is factually similar to *Linn*, except that Linn was a member of management and consequently could not proceed against the union pursuant to the N.L.R.A., whereas Hill[7] was a member of the union and had a claim pursuant to the Act. Hill filed a two-count complaint in the state court, in the first of which he alleged that the union discriminated against him in its operation of an exclusive hiring hall. In count two Hill alleged that the union had engaged in outrageous conduct, threats and intimidations and offered evidence at trial about incessant verbal abuse and frequent public ridicule. Hill's count two was based on California law permitting an action for outrageous conduct; in the complaint Hill alleged grievous emotional distress resulting in bodily injury. The state trial court dismissed count one on the ground that federal law preempted state jurisdiction and count two went to trial before a jury. The California appellate courts vacated the jury verdict and the Supreme Court granted certiorari. The Court relied in part upon *Linn* in holding that "[n]othing in the federal labor statutes protects or immunizes from state action violence or threats of violence in a labor dispute . . ." (citations omitted) *Farmer*, 430 U.S. at 299, 97 S.Ct. at 1063. In considering Hill's rights under the Labor Act, the Court pointed out that the board could not award Hill damages for pain, suffering or medical expenses and that the state court action claim that the defendant intentionally engaged in outrageous conduct could be resolved without resolution of the underlying labor dispute involving discriminatory operation of the hiring hall. The Court concluded:

> On balance, we cannot conclude that Congress intended to oust state-court jurisdiction over actions

[7] Hill's death pending the litigation resulted in Farmer, as administrator of the estate, being substituted.

> for tortious activity such as that alleged in this case. At the same time, we reiterate that concurrent state-court jurisdiction cannot be permitted where there is a realistic threat of interference with the federal regulatory scheme. Union discrimination in employment opportunities cannot itself form the underlying "outrageous" conduct on which the state-court tort action is based; to hold otherwise would undermine the pre-emption principle. Nor can threats of such discrimination suffice to sustain state-court jurisdiction. It may well be that the threat, or actuality, of employment discrimination will cause a union member considerable emotional distress and anxiety. But something more is required before concurrent state-court jurisdiction can be permitted. Simply stated, it is essential that the state tort be either unrelated to employment discrimination or a function of the particularly abusive manner in which the discrimination is accomplished or threatened rather than a function of the actual or threatened discrimination itself. (footnote omitted)

Id. at 305, 97 S.Ct. at 1066. .

Factual and Procedural Background

With this background, we consider the facts of this particular case. Ben Carter became a member of Local 13 of the Sheet Metal Workers' Union in New Jersey. Carter worked from 1956 to 1965 for various building contractors on jobs obtained through the union. Carter worked principally in northern New Jersey and New York City, but at times worked at a greater distance from his home. From 1965 to 1968 Carter operated his own sheet metal shop, after which he obtained work as a nonunion estimator with a building contractor. At this time he had his first conflict with the union, growing out of his refusal to contribute to a strike fund. The union levied a $1,500 fine against him but, through correspondence with the International, Carter secured a cancellation of this fine.

Carter's second major conflict occurrred when he requested a withdrawal card from Local 13 in view of the fact that he was working in management. The union delayed issuance of the withdrawal card for several months, claiming that Carter owed the union funds from obligations incurred while Carter operated his local sheet metal company. The union asserted that Carter had failed to pay certain monies in to the vacation and retirement funds in behalf of union members who worked for Carter. After Carter's several requests to the International that it require the Local to issue the withdrawal card, the Local 13 yielded and issued the card.

Carter moved to Augusta, Georgia, in late 1971 and desired to engage in sheet metal work as a union member. To join Local 85, headquartered in Augusta, Carter had to obtain a reinstatement card from Local 13 which he sought by a latter written January 21, 1972. From that date until March of 1972 Carter corresponded with the Local and the International, but the reinstatement card was not forthcoming. That time frame, during which the International failed to intercede on Carter's behalf, was the principal period of appellant's allegedly tortious conduct. Record at 365 n.4. Carter eventually obtained his card in 1978.

In December, 1972, Carter filed suit in state court. After protacted litigation,[8] Carter eventually prevailed on the merits against the International in federal court.

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[8] Carter secured a state court judgment against the International, but it was set aside by the Georgia Supreme Court because of insufficient service of process on the International Union. Carter recommenced his action in June 1978 in the state court in Augusta, Georgia, which action was removed by the International Union to the United States District Court and thereafter tried to a jury verdict.

At trial, Carter testified that "[t]he advantages of being a member of the Sheet Metal Workers' Union is that you make a much greater salary or an hourly wage than you would be working for an open shop." He claimed that he was discriminated against because he did not hold a union card and further testified that regularity of employment is much greater if you are a member of organized labor. Finally, in response to his attorney's request to describe the embarrassment, scorn and derision that he claimed to have suffered as a result of this conduct inflicted on him among his friends, associates, relatives, and fellow employees, Mr. Carter answered: "Well, most of the time, I couldn't get suitable work. And when I did gain work, it was for a lower wage rate and I couldn't provide for my wife as I had usually done. And I felt dejected." The jury found for Carter.

The district court in its order of March 18, 1982, denying the Internatonal's motion for judgment notwithstanding the verdict, characterized the case as follows: "The case, however, proceeded to trial only upon an appended state tort claim for intentional infliction of emotional distress." Plaintiff-appellee in his brief in this court characterizes the cuase of action as follows: "The plaintiff throughout this period of time, which consisted of more than six years, had to endure the denial of his right to work in a right to work state based upon a continuing refusal of the unions to have his card reinstated and transferred to the Augusta, Georgia area. Plaintiff submits unto the court that the conduct complained of is definitely within the exemptions to the *Garmon* Doctrine and his cause of action is not preempted by the National Labor Relations Act." Appellee's Brief at 17.

Appellee further contends that he was not suing for lost wages but for the mental anguish he endured throughout

this entire period of time. The argument is made that the plaintiff was powerless to pursue his right to work in Georgia and that he was forced to work jobs that did not employ union laborers and that frequently this was at long distances from his home.

Opinion

Our review of the evidence in this case convinces us that the emotional distress for which the plaintiff recovered damages was a consequence of Carter's failure to secure work in the Augusta area and to obtain wages as high as he would have made as a union member. Carter submitted no evidence by "friends, associates, relatives and fellow employees" with respect to embarassment, scorn and derision. Nor was there any evidence of medical expense resulting from emotional distress. The only evidence of emotional distress was his statement, "I felt dejected."

The conduct of the defendant International Union challenged in this lawsuit is its failure to intercede in Carter's behalf with the Local 13 between January and March, 1972. That conduct, according to Carter, resulted in his inability to secure his union card in Augusta and denied him the right to work as a union member, causing him emotional distress. As quoted above, the Supreme Court in *Farmer* stated:

> Union discrimination in employment opportunities cannot itself form the underlying "outrageous" conduct on which the state court tort action is based; to hold otherwise would undermine the preemption principle. . . . Simply stated, it is essential that the state tort be either unrelated to employment discrimination or a function of the particularly abusive manner in which the discrimination is accomplished

> or threatened rather than a function of the actual or threatened discrimination itself.

Farmer, supra, 430 U.S. at 305, 97 S.Ct. at 1066.

The instant case does not satisfy the *Farmer* standard. The complaint alleges that the International and Local 85 in Augusta, Georgia, conspired to deny Carter the opportunity to pursue his trade as a sheet metal worker in the Augusta area. The underlying conduct precipitating that lost opportunity was Local 13's refusal to issue Carter a reinstatement card and the Internatinal's refusal to issue Carter a reinstatement card and the International's refusal to order Local 13 to do so. Local 13's alleged reason for not issuing the reinstatement card was Carter's refusal to pay the union vacation and retirement funds, an indeptedness incurred by Carter when he operated his own sheet metal business as an employer. These facts suggest that Carter's emotional distress was merely incident to the alleged discrimination rather than unrelated to it or a product of a paricularly abusive *manner* of discrimination, as required by *Farmer. See Viestenz* v. *Fleming Companies,* 681 F.2d 699, 703-04 (10th Cir.) *cert. denied* ____ U.S. ____, 103 S.Ct. 303, 74 L.ED.2d 284 (1982); *Taylor* v. *St. Regis Paper Co.,* 560 F. Supp. 546, 549 (C.D.Cal.1983). *Cf. Magnuson* v. *Burlington Northern, Inc.,* 576 F.2d 1367, 1369 (9th Cir.) *cert. denied* 439 U.S. 930, 99 S.Ct. 318, 58 L.Ed.2d 323 (1978) (employment dispute under Railway Labor Act, 45 U.S.C. §§ 151-188); *Beers* v. *Southern Pacific Transp. Co.,* 703 F.2d 425, 428-29 (9th Cir.1983)(same).

This case is almost indistinguishable from the facts in *Local 100* v. *Borden,* 373 U.S. 690, 83 S.Ct. 1423, 10 L.Ed. 638 (1963). In that case, a union business agent, with the ultimate approval of the local union itself, refused to refer the respondent to a particular job he

sought, even after the prospective employer requested that he be sent over. This refusal resulted in an inability to obtain the employment. *Id.* at 691-92; 83 S.Ct. at 1424-25. Under these circumstances, the Court concuded that "the *conduct* on which the suit is centered . . . is conduct whose lawfulness could initially be judged only by the federal agency vested with exclusive primary jurisdiction to apply federal standards." *Id.* at 698, 83 S.Ct. at 1428 (emphasis original). By comparison, in the instant case, plaintiff suffered an inability to obtain employment because of the Local's refusal to grant a reinstatement card and the International's refusl to compel its issuance. In view of this factual similarity, *Borden* is very persuasive, if not controlling.

Our conclusion in this case is further supported by the recent Supreme Court opinion in *Local 926* v. *Jones*, ____ U.S. ____, 103 S.Ct. 1453, 75 L.Ed.2d 368 (1983), a case arising in Georgia. The complaint alleged that the defendant business agent and representative of the union had "maliciously and with full intent, intimidated and coerced Georgia Power Company, or caused Georgia Power Company to be intimidated and coerced, into breaching its employment contract with plaintiff." *Id.* at ____, 103 S.Ct. at 1457.

The Georgia Court of Appeals, 159 Ga. App. 693, 285 S.E.2d 30, sustained this complaint and relied upon its opinion in *Sheet Metal Workers International Assn.* v. *Carter*, 133 Ga.App, 872, 212 S.E.2d 645 (1975), the present case being considered by us. The Supreme Court held that the Georgia Court of Appeals erred and that the *Jones* state case was preempted. *Jones* relied on *Sears*, *supra*, in which the Court stated that " 'the critical inquiry' in deciding whether a state claim is preempted because the challenged conduct is arguably prohibited by

the federal labor laws is 'whether the controversy presented to the state court is indentical to . . . or different from . . .that which could have been, but was not, presented to the Labor Board.' 436 U.S. at 197, 98 S.Ct. at 1757." *Jones*, 103 S.Ct. at 1461. Rejecting Jones' dissimilarity argument, the Court concluded that:

> [e]ven if the Georgia law reaches non-coercive interference with contractual relationships, a fundamental part of such a claim is that the Union actually caused the discharge and hence was responsible for the employer's breach of contract. Of course, this same crucial element must be proved to make out a § 8(b)(1)(B) case; the discharge must be shown to be the result of Union influence. . . . This was not the case in *Sears*. There the state court action was for trespass. It challenged only the location of the Union picketing.

Jones, 103 S.Ct. at 1462.

[5, 6] It is clear to us that the conduct or behavior of Local 13 and the International which was the basis of the jury verdict in this case, is the same conduct or behavior which would support an unfair labor practice complaint filed with the National Labor Relations Board pursuant to 29 U.S.C. § 158(b), which prohibits discrimination on any other ground except the failure to pay dues.[9] The

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[9] § 158(b) provides:

> It shall be an unfair labor practice for a labor organization or its agents-(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

point here is somewhat analogous to the general principle that a plaintiff cannot split a cause of action. A plaintiff cannot sue a defendant in two different causes of action such as in contract and in tort based on the same set of facts. The federal preemption doctrine provides that a disputant in a labor union controversy cannot file an action in a state court based upon a common law or statutory ground if the facts essential to the state court cause of action are the same as those essential to an unfair labor practice complaint. The exception, of course, is where (1) the conduct is so deeply rooted in local law that the state's interest in regulating is compelling, or (2) the matter is of only peripheral concern to the federal labor policy. *Belknap, Inc.* v. *Hale*, ____ U.S. ____, 103 S.Ct. 3172, 3177, 3182, 77 L.Ed. 798 (1983). Here Carter's Georgia lawsuit had as its essential facts the failure of a local Union 13 to issue him a resinstated union card and the Inernational's complicity in such a refusal. Without those facts, Carter had no state cause of action. Yet, those same essential facts address only the existence of discrimination for some reason other than the non-payment of dues, not the abusive manner in which it was carried out; therefore, they also make up the unfair labor practice claim. Accordingly, Carter's Georgia action is preempted. We reverse the judgment of the district court.

REVERSED and REMANDED.

APPENDIX B

49788. Sheet Metal Workers' International Assoc.
v. Carter
C-110

49789. Local 85, Sheet Metal Workers &c. v. Carter
C-111

Clark, *Judge.*

Does the National Labor Relations Act preempt state jurisdiction in an action based upon a tort conspiracy brought by an employee against a labor union and its local? This question is presented by the instant appeal. For in-depth discussions of the doctrine of federal preemption in labor disputes see articles in 83 Harv. L. Rev. 552 (1969) and 85 Harv. L. Rev. 1337 (1972).[1]

Carter sued the Sheet Metal Workers International Association and its Augusta local union in the Superior Court of Richmond County. His complaint alleges the parent union and its local "conspired together, maliciously and wilfully, to deprive the plaintiff of his employment in the Sheet Metal Industry and of his means of livelihood, to cause the plaintiff to be denied employment in this Industry, to deny the plaintiff his right and privilege to be a member of defendants' union, to impair the plaintiff's reputation among prospective employers, and to subject the plaintiff to embarrassment, scorn and derision among his friends, associates, relatives and fellow employees." (R. 4). He avers that in January 1972 the representatives of the defendants "acting for and under the specific instructions of all defendants herein, maliciously, and without probable cause therefor, used the threat of union coercion and pressure to cause the plaintiff to be denied employment of a

[1] These are respectively by Michael A. Broomfield, *Preemptive Federal Jurisdiction Over Concerted Trespassory Union Activity* and by Archibald Cox, *Labor Law Preemption Revisited.*

job in his industry for which he was ready, willing and able to perform." (R. 5). The pleading further states defendants forced an employer of the plaintiff to discharge him and that as a result of defendants' acts, he has been unable to find employment. Plaintiff-appellee sued for $25,000 as damages, $50,000 as punitive damages, and $10,000 as attorneys fees.

Each defendant filed separate motions to dismiss upon the ground that "this court does not have jurisdiction of the subject matter of this complaint" together with their answers denying the allegations. The trial court denied both motions to dismiss from which judgments these appeals have been taken separately with requisite review certificates.

The Unions succinctly state their position to be that "the matter is arguably covered by the National Labor Relations Act, 29 United States Code, Sections 157 and 158; therefore exclusive jurisdiction of the matter rests with the National Labor Relations Board." In their erudite briefs able counsel for both unions have listed many cases, including our Supreme Court cases of *United Brotherhood of Carpenters &c.* v. *Briggs*, 218 Ga. 742 (130 SE2d 707) and *Armstrong Cork Co.* v. *Joiner*, 221 Ga. 789 (147 SE2d 317). Neither *Briggs* nor *Joiner* concerned an individual tort. Inasmuch as these as well as their foreign citations rest upon the leading case of San Diego Building Trades Council v. Garmon, 359 U.S. 236 (79 SC 773, 3 LE2d 775) we will, in the interest of space, limit our discussion to that opinion. There Justice Frankfurter pointed out the basic point: "The governing consideration is that to allow the States to control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy." Id. at 246. To avoid this hazard the tribunal established the principle which appellants here assert that "when an activity is arguably subject to § 7 and § 8 of the Act, not only the State Courts but the Federal courts must

defer to the exclusive competence of the Labor Board if the danger of State interference with National policy is to be averted."

We noted (as did appellants) that the *Garmon* case also states at its conclusion on page 247 that previous holdings "... have allowed the States to grant compensation for the consequences, as defined by the traditional law of torts, of conduct marked by violence and imminent threats to the public order ... [and] to enjoin such conduct."

It is true that the instant case does not involve the specific excepted circumstances of violent conduct and imminent threats to public order. Nevertheless, it must be observed that there are other situations where state court jurisdiction is appropriate. Thus, in Linn v. Plant Guard Workers, 383 U.S. 53 (86 SC 657, LE2d (1966)) the court ruled the state judicial remedy of a tort suit by an aggrieved individual was available for malicious libel occurring during a union organizing campaign. There it was held that the state remedy for malicious libel could be pursued along with a NLRB remedy if the conduct complained of also constituted an unfair labor practice. In short, both the state and federal remedies would be available in appropriate cases when they are not inconsistent.

Subsequently in Taggart v. Weinacker's, Inc., 397 U.S. 223 (90 SC 876, 25 LE2d 240) a concurring opinion by Chief Justice Burger enlarged upon the situations wherein state jurisdiction existed in labor cases. We deem the Chief Justice's views to be applicable to the instant appeals. At page 228 he said "*Garmon* left to the States the power to regulate any matter of 'peripheral concern' to the NLRA or that conduct that touches interests 'deeply rooted' in local feeling and responsibility.' (359 U.S. at 243, 244). Few concepts are more 'deeply rooted' than the power of a State to protect the rights of its citizens."

We recognize the instant case may be within the jurisdiction of the National Labor Relations Board even though

it does not involve an employer as a party. Nevertheless, the state's concern "to protect the rights of its citizens" require us to acknowledge that the plaintiff here would be deprived of certain legal rights in the event we ruled the state court lacked jurisdiction. We refer to the fact that the power of the NLRB is limited by the provisions of the federal statute. When the Board finds either a union or an employer guilty of an unfair labor practice it has the power to enter a cease-and-desist order " . . . and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter: *Provided,* that where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him . . ." 29 U.S.C. § 160(c). Although the appellant Unions argue that this remedy would enable the NLRB to make the plaintiff whole, it is obvious that it does not include power to award him exemplary damages or attorneys' fees. Under Georgia law a plaintiff has the right upon presentation of proper proof satisfactory to the court and jury to receive punitive damages (Code Ann. § 105-2002). Reasonable attorneys' fees also may be awarded in certain instances. Code Ann. § 20-1404; *Traders Ins. Co.* v. *Mann,* 118 Ga. 381, 384 (45 SE 426); *Roberts Pest Control* v. *McDonald,* 132 Ga. App. 257, 260 (4) (208 SE2d 13).

As is observed in the *Linn* case at page 63: " . . . The Board can award no damages, impose no penalty, or give any other relief to the defamed individual. On the contrary, state remedies have been designed to compensate the victim and enable him to vindicate his reputation. The Board's lack of concern with the 'personal' injury caused by malicious libel, together with its inability to provide redress to the maligned party, vitiates the ordinary argument for pre-emption . . ." The court's observation dealt with a libel action but those views are appropriate to the instant case. Moreover, this special situation

as to punitive damages was recognized in International Union U.A.W. v. Russell, 356 U.S. 634 (78 SC 932, 2 LE2d 1030). There the Court noted that "Congress did not establish a general scheme authorizing the Board to award full compensatory damages for injuries caused by wrongful conduct. United Workers v. Laburnum Corp., 347 U.S. 656, 666-667." *Id.* page 643. It ruled that plaintiff was entitled to maintain his action in the state jurisdiction stating that " . . . an employee's right to recover, in the State Courts, *all* damages caused him by this kind of tortious conduct cannot fairly be said to be pre-empted without a clearer declaration of congressional policy than we find here. . . . " *Id.* page 646.

In making our decision we decline to follow the 1955 ruling of our court in *Collins* v. *Merritt-Chapman & Scott,* 91 Ga. App. 856 (87 SE2d 337) wherein a contrary conclusion was reached. That opinion was concurred in by only two judges with the third judge concurring specially while expressing his disagreement with the majority's view as to the NLRB pre-empting state jurisdiction. A decision which is not concurred in by all the judges constituting a division is not a controlling precedent. Court Rule 26(c); Code Ann. § 24-3626(c); *Powell* v. *Smith,* 70 Ga. App. 754, 768(2) (29 SE2d 521). Accordingly, Collins v. Merritt-Chapman & Scott, supra, is expressly disapproved of and will not be followed.

In *Hudgens* v. *Local 315, Retail &c. Union,* No. 49328, decided Oct. 4, 1974, 133 Ga. App. 329 (— SE2d —), we, upheld a trial court's ruling that Federal jurisdiction of a labor dispute preempted the state courts. We noted that the matter was already pending before the National Labor Relations Board when a state injunction and declaratory judgment was sought. We considered it proper to have the labor dispute completed in the jurisdiction in which proceedings were pending with adequate available remedies. We there stated expressly that "our ruling in no

way limits the right of state courts to handle civil damage suits which may arise from labor disputes." That applies to the instant suit which is similar in nature to the *Linn* case where the United States Supreme Court recognized the individual suing on a claim of malicious libel could proceed in the state court for his tort claim even though the claim might also involve a labor dispute which could be pursued in the federal jurisdiction. There would be no conflict in the two remedies nor recovery twice for the same damages. As was noted in *Linn* at page 646, the plaintiff "could not collect duplicate compensation for lost pay from the state courts and the Board."

In ruling that the state court has jurisdiction of this malicious tort action we do not infringe upon nor rule contrary to the holding of Local No. 438, Construction &c. Laborers Union v. Curry, 371 U.S. 543 (93 SC 531, 9 SE2d 514) relied upon by appellants. There an employer had sought injunctive relief against picketing claimed to be in violation of the Georgia Right-To-Work Law. On that basis our Supreme Court ruled the picketing to be for an unlawful purpose and to be enjoined. *Curry* v. *Construction &c. Union Local*, 217 Ga. 513 (123 SE2d 653). The U. S. Supreme Court reversed on the basis that there existed at least an arguable violation of the National Labor Relations Act so that the State Court had no jurisdiction to issue an injunction or to adjudicate the controversy as it lay within the exclusive power of the National Labor Relations Board. As we have heretofore opined, the instant case based on an alleged malicious and wilful tort with a claim for punitive damages is not within the exclusive federal regulatory scheme.

Judgment affirmed. Bell, C. J., and Quillian, J., concur.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 82-8198

Ben CARTER,

Plaintiff-Appellee,

v.

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION and Local 85 Sheet Metal Workers' International Association,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion February 13, 11 Cir. 1984, ____ F.2d ____).

(March 16, 1984)

Before HATCHETT and CLARK, Circuit Judges and SCOTT*, District Judge PER CURIAM:

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[1] *Honorable Charles R. Scott, U.S. District Judge for the REHG-6 Middle District of Florida, was a member of the panel that heard oral arguments but due to his death on May 12, 1983, did not participate in this decision. This case was decided by quorum 28 U.S.C. § 46(d).

( ) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

THOMAS A. CLARK

Thomas A. Clark
United States Circuit Judge

APPENDIX D

IN THE SUPERIOR COURT OF RICHMOND COUNTY, GEORGIA

Civil Action No. 3147-C

BEN CARTER, *Plaintiff*

vs.

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND LOCAL 85 OF SHEET METAL WORKERS' INTERNATIONAL ASSN., *Defendants*

Complaint

Now Comes the plaintiff, pleading against the defendants in the above styled matter and respectfully shows unto the Court the following facts:

1.

At all times mentioned herein, the defendants, SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND LOCAL 85 OF SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, were and are labor organizations and associations doing business in Richmond County, Georgia, and have members in Richmond County, Georgia, upon whom service can be made, and the defendants are therefore subject to the jurisdiction of this Court as is permitted under Georgia Laws 1959, Pages 44-45.

2.

Beginning in January of 1972, the defendants conspired together, maliciously and wilfully, to deprive the plaintiff of his employment in the Sheet Metal Industry and of his means of livelihood, to cause the plaintiff to be denied employment in this Industry, to deny the plaintiff his right and privilege to be a member of defendants' union, to im-

pair the plaintiff's reputation among prospective employers, and to subject the plaintiff to embarrassment, scorn and derision among his friends, associates, relatives and fellow employees.

3.

In January of 1972, pursuant to, and in furtherance of, said conspiracy defendants' agents, officers and members, acting for and under the specific instructions of all defendants herein, maliciously, and without probable cause therefor, used the threat of union coercion and pressure to cause the plaintiff to be denied employment of a job in his industry for which he was ready, willing and able to perform.

4.

In March of 1972, pursuant to this same scheme and conspiracy, these individuals coerced and forced an employer of the plaintiff to dismiss the plaintiff from a job in his industry which he then presently held.

5.

As a result of the aforesaid acts, the plaintiff has been unable to find employment in his industry, and he is entitled to recover, among other things, the wages he has lost for the aforesaid acts of the defendants.

6.

The plaintiff is therefore, entitled to recover from the defendants for the aforesaid acts and conduct damages in the sum of Twenty Five Thousand and no/100 ($25,000.00) dollars, punitive and exemplary damages in the sum of Fifty Thousand and no/100 ($50,000.00) dollars and attorney's fees in the sum of Ten Thousand and no/100 ($10,000.00) dollars.

WHEREFORE, plaintiff demands that he have judgment against the defendants as follows:

A. Damages in the sum of Twenty Five Thousand and no/100 ($25,000.00) dollars.

B. Punitive and exemplary damages in the sum of Fifty Thousand and no/100 ($50,000.00) dollars.

C. Attorney's fees in the sum of Ten Thousand and no/100 ($10,000.00) dollars.

D. The interests and costs of this action.

E. And such other and further relief as the Court may deem proper.

/s/ WILLIAM R. MCCRACKEN
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